IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.6366/07
Smt. Maya Devi Vs. The Addl. Civil Judge (Sr. Div.), Gangapurcity & Anr.

3.10.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri M.M. Ranjan for petitioners.
Shri Rajnish Gupta for respondents.

The petitioners have challenged the order dated 4.8.2007 whereby the learned trial court has allowed the application filed by the plaintiff seeking amendment of the plaint.

The learned counsel for the petitioners argued that the amendment application was made for so called subsequent amendments which in fact have taken place in the year 2002 whereas the application has been submitted five years

thereafter i.e. on 18.7.2007. It was argued that the application was lacking in facts and was intended to delay the suit. It was argued that the amendments have been allowed at the stage of final hearing and this would further delay the early completion of the trial. The respondents did not come out by any explanation as to why this diligence could not apply for such amendment.

On the other hand, Shri Rajnish Gupta, the learned counsel for the respondents opposed the writ petition and argued that the plaintiff has sought the amendments only with a view to incorporate the subsequent developments that the defendant was putting the shop in question for use other than one for which it was let out to him. It was

argued that originally the shop was let out for wood work but the defendant has now started selling eatables and cold drinks and sugarcane juice on that shop and this amount to change of use in as much as causing nuisance. It was argued that the learned trial court taking note of the fact that there is some delay in the application imposed a cost of Rs.500/-. The learned counsel argued that when the plaintiff could file a fresh suit for the subsequent developments giving rise to new cause of action, there was nothing illegal in permitting the amendments to avoid multiplicity of the litigations. It was argued that the petitioner in para 7 of the application categorically stated that in the event of amendments being allowed, he would not

produce any additional evidence and there would thus no possibility of delay.

Having heard the learned counsel for the parties and perused the material on record, I find that although the amendment application was made at the time when the matter was ripe for final arguments but the trial court in its order has taken the view that declining the permission to amend the plaint would deprive the plaintiff of his right and since the amendments were raised on subsequent events, even if delayed, its permission would not in any manner prejudice the case of the respondent in any case which would be compensated by cost. The learned trial court has awarded the cost of Rs.500/-. In the application moved by the plaintiff before the trial

court, it has been categorically stated that in the event of amendments been allowed, the plaintiff could not adduce any further evidence.

In the circumstances, therefore, it cannot be said that mere amendment would cause any delay in early completion of the trial. However, I find that the trial court has not awarded sufficient amount as costs. The amendment in fact was applied for with a substantial delay when the matter riped for final arguments. I therefore deem it appropriate to enhance the amount of cost from Rs.500/- to Rs.1,500/- and direct that upon the plaintiff respondent depositing the said amount or if the amount of cost by earlier order of trial court has already been deposited, the

difference of the aforesaid two amounts, the amendment prayed by the impugned order shall be allowed to be incorporated in the suit.

With these modifications, the writ petition is partly allowed.

(Mohammad Rafiq),J.

Rs/-